IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.362 OF 1983

Baburao Shankarrao Chavan ...Appellant

vs.

Murari Shankar Jajoo ...Respondent

Ms Deepa Sawant for Shri C.G.Gavnekar for the Appellant
Shri R.M.Purandare for the Respondent

CORAM: A.S.OKA,J.
DATE : FEBRUARY 24, 2005.

ORAL JUDGMENT:

1. Second Appeal was admitted on 10th August 1983 by passing the following order :

. "Admit. Notice on the question whether the plaintiff proves the suit claim.

. To be heard along with F.A.No.550 of 1981"

2. At the outset, it was noted that the First Appeal No.550 of 1981 which was ordered to be heard along with this Second Appeal was transferred to the District Court at Nasik as a result of Amendment to the provisions of Bombay Civil Courts Act, 1869. As per the report received from the II Additional District Judge, Nasik, the said First Appeal which was renumbered as Civil Appeal No.155 of 1992 has been decided on 30th September 2004.

3. The Appellant is the original Defendant and the Respondent is the original Plaintiff. The challenge in this Appeal is to the money decree passed by the Trial Court in favour of the Respondent-Plaintiff directing the Appellant to pay a sum of Rs.9165/- with interest thereon at the rate of 6% p.a. to the Respondent.

4. It is not in dispute that the parties were knowing each other. The case of the Respondent is that the Appellant was in need of money for payment of consideration of Rs.9000/- for the purpose of purchasing a motor car. The Appellant had agreed to purchase the motor car from one Malpani, after payment of cash amount of Rs.4000/- to the said Malpani. It is the case of the respondent that hawala was taken by him for the balance amount of Rs.5000/- and the Respondent paid balance amount of Rs.5000/- to the said Malpani. It is alleged that 2 cheques in the sum of Rs.1000/- each given by the Respondent to the Appellant were encashed and the said amount was received by the Appellant. It was also alleged that a sum of Rs.2000/- was paid in cash by the Respondent to the Appellant.

5. The suit was resisted by the Respondent by filing written statement. He admitted of having received a sum of Rs.2000/- from the Respondent in cash. However, he denied to have received a sum of Rs.2000/- by cheques. The Appellant contended that he had approached one Nanji who directed him to

the Respondent as the Respondent was liable to pay a sum of Rs.5000/- to the said Nanji and therefore the Respondent gave hawala of Rs.5000/- to Malpani on behalf of the Appellant. It is contended that the Respondent had paid an amount which was due and payable by him to Nanji to the said Malpani and as such he was not entitled to recover the said amount from the Appellant. The Courts below have accepted the case of the Respondent and thus there is decree as stated above against the Appellant.

5. The learned Counsel for the Appellant submitted that there was no evidence whatsoever on record to show that the Appellant is liable to pay the disputed amount of Rs.7000/- to the Respondent. The learned Counsel further submitted that the amount which was paid by the Respondent to the said Malpani was in fact the amount due and payable to the said Nanji and therefore, there cannot be any decree in the sum of Rs.5000/- against the Appellant. She submitted that it was the case where no evidence is brought on record. The learned Counsel for the Respondent supported the impugned Judgments and Decrees.

6. In so far the liability for payment of Rs.2000/- is concerned, it is already admitted by the Appellant. The Appellate Court has recorded a finding that the Appellant admitted that he received two cheques in the sum of Rs.1000/- each in his name and he has encashed the said cheques.

Therefore, the dispute narrows down to the sum of Rs.5000/-.

7. The Appellate Court held that in the written statement there is admission of the fact of the Respondent giving hawala of Rs.5000/- to Malpani. The Appellate Court has referred to the evidence of the Respondent regarding payment of Rs.5000/- to Malpani. Shri Malpani was also examined and he admitted of having received an amount of Rs.5000/- from the Respondent. On receipt of the said amount the car was transferred by Shri Malpani in favour of the Appellant.

8. In the Trial Court the said Nanji has been examined. The Appellate Court has observed that the said Nanji stated on oath that he did not remember the alleged transaction between him and the Respondent. He also admitted that he has no evidence to show that he had paid Rs.5000/- to the Respondent.

9. The Courts below, therefore, on appreciation of oral evidence of Nanji and other witnesses has held that the Appellant failed to prove that the Respondent was liable to pay a sum of Rs.5000/- to the said Nanji. The payment of Rs.5000/- by the Plaintiff to the said Malpani and transfer of the vehicle in favour of the Appellant on receipt of Rs.5000/- has been duly proved and established on evidence.

10. The findings of fact recorded by the Courts below are based on the legal evidence on record. Even assuming that it

is possible to take a different view on the basis of evidence on record, it is not permissible to do so in the Second Appeal under Section 100 of Code of Civil Procedure, 1908.

11. There is no merit in the Second Appeal and the same is dismissed with no order as to costs.

JUDGE.